

Memo to the file

From: Debora Clovis



Date: 7/31/14

Re: No Records found determination for FOIA EPA-HQ-2014-007268 request, Items 4 and 5

The request for records in EPA-HQ-2014-007628 submitted on 6/19/14, asks, in part, for:

4. "any and all records concerning petitions submitted to EPA or a State under 40 CFR § 122.26(f)(1) and EPA's responses thereto; and 5. any and all records concerning EPA's or a State's exercise of its authority to designate sites identified in 40 CFR § 122.26(f)(1) for NPDES permitting, whether or not such exercise of authority is in response to a petition."

122.26(f)(1) authorizes an MS4 to request that an individual permit be issued for a discharger to its system. Other subsections under 122.26(f) describe other petitions that can be filed.

I sent a request to all Regions asking for responsive records. We also talked about the request on a conference call to verify the petitions covered by 122.26(f)(1). In discussing request 5., we interpreted it to ask for residual designations made under 122.26(f)(1).

9 Regions reported in e-mails that they had no records responsive to the request. Region 6 sent a recently submitted petition to a designate an MS4. The Region reported that it was the first petition that the Region it had received. It was neither a petition submitted under (f)(1) nor an exercise of EPA's or a State's residual designation authority based on an MS4's request for an individual permit for a discharger to the MS4's system. Therefore, I determined that Region 6 had no responsive records for requests 4 and 5. The FOIA coordinator in Region 1 informed me on 7/31/14 that a staff person dropped by a stack of records about a foot high with a note that they were responsive to request 4. Because Region 1 previously indicated that it had no responsive records, I asked that ORC review the records and determine whether or not they responsive to the request. In e-mails, Ann Williams informed that she reviewed the records and determined they were not responsive to either request.

Based on the narrowness of the request and that any residual designations by EPA or a State would have resulted in the issuance of a permit that would have been known to staff in the Regions, I determined that the Regions' searches were reasonable under the circumstances and that further searches would not be likely to uncover responsive records.

